

SUPREME COURT OF WISCONSIN

CASE No.: 2004AP548-W

COMPLETE TITLE:

State of Wisconsin ex rel. Marvin Coleman,
Petitioner,
v.
Gary R. McCaughtry, Warden, Waupun Correctional
Institution and Matthew J. Frank, Secretary,
Department of Corrections,
Respondents.

MOTION FOR RECONSIDERATION

OPINION FILED: November 7, 2006

SUBMITTED ON BRIEFS:

ORAL ARGUMENT:

SOURCE OF APPEAL:

COURT:

COUNTY:

JUDGE:

JUSTICES:

CONCURRED:

DISSENTED: ABRAHAMSON, C.J., dissents (opinion filed).
BUTLER, JR., J., joins the dissent.

NOT PARTICIPATING:

ATTORNEYS:

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2004AP548-W
(L.C. No. 1985CR2721 & 1985CR2722)

STATE OF WISCONSIN

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Gary R. McCaughtry, Warden, Waupun Correctional
Institution and Matthew J. Frank, Secretary,
Department of Corrections,

Cornelia G. Clark
Clerk of Supreme Court

Respondents.

MOTION for reconsideration. *Reconsideration denied.*

¶1 PER CURIAM. Marvin Coleman, the petitioner, moves the court to clarify or to reconsider its decision in the above captioned case.

¶2 We deny Coleman's motion for reconsideration.

¶3 However, we do clarify our opinion to facilitate its application. Accordingly, we amend footnote 13 to read as follows:

At the subsequent fact finding hearing in this habeas corpus proceeding, laches may be considered in regard to its effect on any potential issues, such as ineffective assistance of counsel, suppression or a

retrial of the crimes of which Coleman stands convicted.

¶4 SHIRLEY S. ABRAHAMSON, C.J. (*dissenting*). I would deny the motion for reconsideration, but I would amend the opinion to provide for remand on the issue of laches, as Justice Louis B. Butler's concurring opinion (in which I joined) requested. I do not ordinarily continue on reconsideration the position I took in concurrence or dissent. In the present case, however, the defendant has provided the court material not previously before us to show that the assumed factual basis upon which the court decided laches as a matter of law may be erroneous. I have not explored whether the new material is relevant to the issue of laches. This case is being remanded; the court of appeals should examine the submitted material, take evidence, and hear the parties to determine laches, an issue upon which the State has the burden of proof. For the reasons set forth, I dissent.

¶5 I am authorized to state that Justice LOUIS B. BUTLER, JR. joins this dissent.

